



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2004

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2004-0470

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194618.

The Tarrant County District Attorney's Office (the "district attorney") received a request for all information concerning a particular case including "all investigations by the Texas Rangers and Prosecutor's office." You contend that some of the information at issue does not constitute public information subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address your contention that some of the information at issue constitutes records of the grand jury. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records Decision Nos. 513 (1988); 398 at 2 (1983) (grand jury is part of judiciary for purposes of Act). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.*

In this instance, we are unable to determine whether the district attorney maintains the requested information on its own behalf or as an agent of the grand jury. Therefore, to the extent the submitted information is maintained by the district attorney for or on behalf of the grand jury, it is in the custody of the district attorney as agent of the grand jury and not subject to disclosure under the Act. To the extent that it is not so maintained, it is subject to the Act and may be withheld only if an exception under the Act is shown to apply. As we are unable to determine the extent to which the submitted information is maintained for or on behalf of the grand jury, we will also address the exceptions that you claim under the Act for this information.

Because your claim regarding section 552.108 is the broadest, we address it first. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance, you state that "the requested information pertains to a criminal case that was 'No Billed' by the Tarrant County Grand Jury." We thus understand you to represent that the information at issue relates to a case that concluded in a result other than conviction or deferred adjudication. Based on this understanding and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c), *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the district attorney must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Other than basic information, the district attorney may withhold the submitted records pursuant to section 552.108(a)(2).

You also assert that portions of the submitted information are protected by common law and constitutional privacy. We will therefore consider whether any of the basic information concerning this incident is so protected. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by the common law right to privacy, which protects information that (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace,

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We have considered the information that is deemed basic information under section 552.108 and find that none of it is protected by common law privacy in this instance. *See generally Houston Chronicle*, 531 S.W.2d at 186-87 (public has legitimate interest in details of crime and police efforts to combat crime in community); Open Records Decision Nos. 611 (1992) (information concerning crime committed by one family member against another not generally considered private), 438 at 7 (1986) (stating that identity of complainant, which generally is public information, may be withheld only in unique circumstances). Accordingly, no basic information may be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

Constitutional privacy, which is also incorporated by section 552.101, consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" that include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy and includes only information that concerns the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). We have considered the information that is deemed basic information and conclude that none of it comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. *See* Open Records Decision Nos. 470, 455, 444, 423 at 2. We therefore find that no basic information may be withheld on the basis of constitutional privacy.

In summary, to the extent the submitted information is maintained by the district attorney for or on behalf of the grand jury, it is in the custody of the district attorney as agent of the grand jury and not subject to disclosure under the Act. To the extent that it is not so maintained, the submitted information may generally be withheld under section 552.108(a)(2); however, basic information must be released. As our ruling on these issues is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

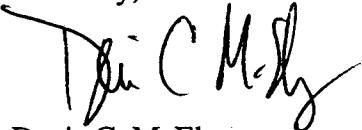
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with the first name "Denis" and last name "McElroy" clearly distinguishable.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 194618

Enc. Submitted documents

c: Mr. Bobby Adian
7852 Longfield Drive
White Settlement, Texas 76108
(w/o enclosures)